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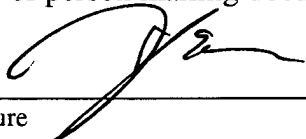
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Appeal Brief Patents
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Harold C. Moore
Name of person mailing document or fee


Signature

March 18, 2009
Date of Signature

Re:	Application of:	Slater et al.
	Serial No.:	09/748,720
	Filed:	December 26, 2000
	For:	Excessive Surge Protection Method and Apparatus
	Group Art Unit:	2836
	Examiner:	Danny Nguyen
	Our Docket No.:	1505-0094

RESPONSE TO NOTICE OF NON-COMPLIANT

APPEAL BRIEF

Sir:

In response to the Notice of Non-Compliant Appeal Brief dated February 18, 2009 for the above-identified patent application, please enter the following response.

I. The Appeal Brief is Not “Non-Compliant”

Applicants have carefully reviewed the “Notification of Non-Compliant Appeal Brief (“Notification”), as well as the Appeal Brief filed December 31, 2008 (“Appeal Brief”) in the above-referenced case. The Appeal Brief does not appear to be non-compliant with 37 C.F.R. 41.37, contrary to the Notification. In particular, the Notification identifies three different instances of non-compliance. None of these instances, however, are in actual non-compliance with the rules, as will be discussed below.

A. The “Status of Claims” Section is Not Non-Compliant

The Notification alleges that “the ‘status of claims’ fails to include claim 1 as being involved in the appeal, however, claim 1 is mentioned throughout the Appeal Brief. Clarification is needed”.

Applicants respectfully traverse. 37 C.F.R. 41.37(c)(iii) requires that the status of each claim be identified, and further requires “an identification of those claims that are being appealed”. The “Status of Claims” section of the Appeal Brief correctly notes that claim 1 has been rejected. Claim 1 is not being appealed, and is not identified as being appealed in the “Status of Claims” section of the Appeal Brief. As a consequence, nothing the “Status of Claims” section regarding claim 1 is in “non-compliance” with 37 C.F.R. 41.37(c)(iii).

Claim 1 is not discussed in the Appeal Brief until page 3, under the “Summary of the Claimed Subject Matter” section of the Brief. In that section, the very first sentence provides clarification as to the reason for the discussion of claim 1. It is discussed in the

“Summary of the Claimed Subject Matter” of the Appeal Brief is provided as a courtesy, to assist the Board in understanding the subject matter of several claims that have been appealed which depend from claim 1.

In summary, claim 1 has not been appealed. The “Status of Claims” section accurately conveys that claim 1 stands rejected, and that it is not under appeal. As to the discussion of claim 1 within the Appeal Brief, appropriate clarification is provided where claim 1 is discussed. Accordingly, the “Status of Claims” section of the Appeal Brief is not “non-compliant”.

B. The “Grounds of Rejection” Section is Not Non-Compliant

The Notification also states that “the ‘Grounds of Rejection’ section must be consistent with the Grounds of rejection listed in the last office action. Each Grounds of rejection to be reviewed on appeal must be identified”.

Applicants have carefully reviewed the “Grounds of Rejection” and the Office Action dated September 3, 2008, and cannot see how they are inconsistent. Each rejection that is being appealed is identified in the same order as it appears in the September 3, 2008 office action. If this Section is indeed non-compliant, applicants respectfully request specific identification of which rejection is not being “identified”.

Otherwise, withdrawal of this allegation of “non-compliance” is respectfully requested.

C. The “Argument” Section is Not Non-Compliant

The Notification further states that “the Appeal Brief fails to argue each heading

under its own heading". Applicants have carefully reviewed the Appeal Brief and have identified a separate heading for each of the "Grounds of Rejection" that are being appealed.

Again, if this Section is indeed non-compliant, applicants respectfully request specific identification of which rejection is not being argued under a separate heading.

Otherwise, withdrawal of this allegation of "non-compliance" is respectfully requested.

II. Conclusion

It is respectfully submitted that the Notification fails to identify any portion of the Appeal Brief that is non-compliant with 37 C.F.R. 41.37. Advancement of the Appeal is therefore respectfully requested. In the alternative, clarification of the specific instances of non-compliance is requested.

Respectfully submitted,



Harold C. Moore
Attorney for Applicants
Attorney Registration No. 37,892
Maginot Moore & Beck
Chase Tower
111 Monument Circle, Suite 3250
Indianapolis, Indiana 46204-5109
Telephone: (317) 638-2922


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**TRANSMITTAL OF RESPONSE TO NOTICE OF NON-COMPLIANT
APPEAL BRIEF**

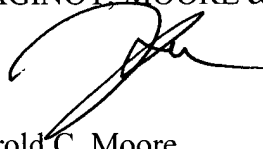
Please find for filing in connection with the above patent application the following:

1. Response to Notice of Non-Compliant Appeal Brief; and
2. One (1) Return Post Card.

Please charge any fee deficiency, or credit any overpayment, to Deposit Account No. 13-0014; but not to include any payment of issue fees.

Respectfully Submitted,

MAGINOT, MOORE & BECK, LLP

A handwritten signature in black ink, appearing to be 'H. Moore', written over the firm name.

March 18, 2009

Harold C. Moore
Registration No. 37,892
Chase Tower
111 Monument Circle, Suite 3250
Indianapolis, Indiana 46204-5109

Enclosures